

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SENATE BILL 1412**

### **AN ACT**

CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 38, ARTICLE 28, ARIZONA REVISED STATUTES, TO "RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE"; AMENDING TITLE 13, CHAPTER 38, ARTICLE 28, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4221; RELATING TO THE RETENTION AND PRESERVATION OF BIOLOGICAL EVIDENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2       Section 1. Heading change

3           The article heading of title 13, chapter 38, article 28, Arizona  
4 Revised Statutes, is changed from "ARSON REWARD FUND" to "RETENTION AND  
5 PRESERVATION OF BIOLOGICAL EVIDENCE".

6       Sec. 2. Title 13, chapter 38, article 28, Arizona Revised Statutes, is  
7 amended by adding section 13-4221, to read:

8           13-4221. Preservation of biological evidence; retention period;  
9           definitions

10          A. NOTWITHSTANDING ANY OTHER LAW, THE APPROPRIATE GOVERNMENTAL ENTITY  
11 SHALL RETAIN ALL IDENTIFIED BIOLOGICAL EVIDENCE THAT IS SECURED IN CONNECTION  
12 WITH A FELONY SEXUAL OFFENSE OR HOMICIDE FOR:

13           1. THE PERIOD OF TIME THAT A PERSON WHO WAS CONVICTED OF A FELONY  
14 SEXUAL OFFENSE OR HOMICIDE REMAINS INCARCERATED FOR THAT OFFENSE OR UNTIL THE  
15 COMPLETION OF THE PERSON'S SUPERVISED RELEASE.

16           2. A COLD CASE, FIFTY-FIVE YEARS OR UNTIL A PERSON IS CONVICTED OF THE  
17 CRIME AND REMAINS INCARCERATED OR UNDER SUPERVISED RELEASE FOR THAT OFFENSE.

18           B. THE GOVERNMENTAL ENTITY SHALL PRESERVE THE EVIDENCE FOR THE PERIOD  
19 OF TIME PRESCRIBED IN SUBSECTION A OF THIS SECTION IN A CONDITION THAT IS  
20 SUITABLE FOR DEOXYRIBONUCLEIC ACID TESTING.

21           C. EVIDENCE RETAINED PURSUANT TO THIS SECTION SHALL BE MADE AVAILABLE  
22 FOR DEOXYRIBONUCLEIC ACID TESTING PURSUANT TO SECTION 13-4240.

23           D. THIS SECTION DOES NOT PRECLUDE A GOVERNMENTAL ENTITY FROM DISPOSING  
24 OF EVIDENCE IN A CASE IN WHICH A CONVICTION HAS BEEN OBTAINED AFTER THE  
25 EXPIRATION OF THE DEFENDANT'S SENTENCE. UNDER ANY OTHER CIRCUMSTANCE, THE  
26 GOVERNMENTAL ENTITY MAY DISPOSE OF BULK PHYSICAL EVIDENCE AFTER THE  
27 CONCLUSION OF THE CONVICTED DEFENDANT'S DIRECT APPEAL AND FIRST  
28 POSTCONVICTION RELIEF PROCEEDING WITH THE AGREEMENT OF THE COUNTY ATTORNEY  
29 AND THE ATTORNEY GENERAL AND THEN, UPON WRITTEN NOTICE TO THE DEFENDANT, ANY  
30 COUNSEL OF RECORD AND THE VICTIM IF NO OTHER LAW REQUIRES THAT BIOLOGICAL  
31 EVIDENCE BE PRESERVED OR RETAINED.

32           E. THIS SECTION DOES NOT LIMIT A GOVERNMENTAL ENTITY'S DISCRETION  
33 CONCERNING THE CONDITIONS UNDER WHICH BIOLOGICAL EVIDENCE IS RETAINED,  
34 PRESERVED OR TRANSFERRED AMONG DIFFERENT ENTITIES IF THE EVIDENCE IS RETAINED  
35 IN A CONDITION THAT IS SUITABLE FOR DEOXYRIBONUCLEIC ACID TESTING.

36           F. FOR THE PURPOSES OF THIS SECTION:

37           1. "BIOLOGICAL EVIDENCE" INCLUDES A SEXUAL ASSAULT FORENSIC  
38 EXAMINATION KIT, SEMEN, BLOOD, SALIVA, HAIR, SKIN TISSUE OR OTHER IDENTIFIED  
39 BIOLOGICAL MATERIAL.

40           2. "COLD CASE" MEANS A HOMICIDE OR A FELONY SEXUAL OFFENSE THAT  
41 REMAINS UNSOLVED FOR ONE YEAR OR MORE AFTER BEING REPORTED TO A LAW  
42 ENFORCEMENT AGENCY AND THAT HAS NO VIABLE AND UNEXPLORED INVESTIGATORY LEADS.